

NEIL TORCZYNER

Attorney at Law

DIRECT TEL.: 516.355.9612

DIRECT FAX: 516.355.9613

NTORCZYNER@HKPLAW.COM

October 3, 2017

U.S. Magistrate Judge Daniel J. Stewart
James T. Foley U.S. Courthouse
445 Broadway - 4th Floor
Albany, New York 12207

By: ECF

Re: Cinthia Thevenin, et al. v. The City of Troy, et al.
Docket No: 16-CV-01115 (DJS)

Dear Judge Stewart:

The firm of Harfenist Kraut and Perlstein, LLP along with Hach & Rose, LLP, represents the Plaintiff in this matter. Defendants are represented by the firm of FitzGerald Morris Baker Firth, P.C. Pursuant to the Court's directive following last week's telephone conference, please allow this letter to serve as a status report for this matter.

The underlying lawsuit relates to an officer involved shooting which occurred on April 17, 2016. It is undisputed that Edson Thevenin was shot and killed by defendant Sergeant Randall French during a traffic stop which occurred around 3:00 AM on April 17, 2016. The instant lawsuit was commenced by Cinthia Thevenin individually, and in various additional capacities on September 13, 2016. (Docket Entry #1). The complaint seeks damages based on Edson Thevenin being improperly subjected to excessive and deadly force in violation of his rights under the Fourth and Fourteenth amendments to the United States Constitution, as well as New York State law. Additionally, the complaint alleges claims against French pursuant to 42 U.S.C. § 1983 and New York State law for money damages as well claims against the City of Troy under New York State Law and pursuant to 42 U.S.C. §1983 for failing to train and supervise French. Defendants filed an Answer on October 12, 2016. (Docket Entry #8). No Amended Complaint or Amended Answer has been filed to date.

On November 29, 2016, the parties appeared before the Court for a Rule 16 initial pre-trial conference and a scheduling Order was entered. (Docket Entry #13). Following the initial conference, the parties served Rule 26 disclosure as well as initial discovery demands. All initial demands have been since responded to by the parties.

To date, the parties have conducted ten (10) depositions which include the Plaintiff, Randall French and eight (8) additional Troy Police officers. Additionally, the parties have set aside dates for the deposition of two more Troy Police officers and potentially, non-party Phillip Gross, which are scheduled for later this month. The parties are also in the process

HKP

U.S. Magistrate Daniel J. Stewart

October 3, 2017

Page 2 of 2

of scheduling the deposition of two of the Plaintiff's family members and it is anticipated that those depositions will be held in November. Plaintiff has also served post deposition demands for production in connection with all of the Troy Police depositions which have been held to date.

During the parties' September 26, 2017 telephone conference with the Court, the parties mentioned various issues which are on the horizon including the Plaintiff's inability to secure Phillip Gross' attendance at a deposition, the Defendants' intent to subpoena a ballistics report prepared by the New York State Attorney General's Office and the parties' joint need of the Grand Jury minutes from the presentation made against Sergeant Randall French on or about April 22, 2016. Following the conference, the Defendants filed an application to the Rensselaer County Court on September 27, 2017 seeking an Order unsealing the Grand Jury minutes and the Plaintiff has submitted an affirmation joining in the application. Additionally, on September 27, 2017, the Plaintiff filed and served a letter application seeking to compel Phillip Gross to appear for a deposition. The Court has since set a telephone conference for October 5, 2017 to address this application.

The parties anticipate that the additional documentary discovery, production of the grand jury minutes (should the County Court unseal them) and production of the ballistics report may create and/or augment the need for additional depositions and the parties will work within the discovery extension granted by the Court in an attempt to complete all depositions and post deposition discovery prior to January 12, 2018.

I thank the Court for its attention in this matter.

Respectfully Submitted
HARFENIST KRAUT & PERLSTEIN, LLP

By: *Neil Torczyner*
Neil Torczyner

CC: All appearing counsel (via ECF only)